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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

In re D.A., a Person Coming Under  
the Juvenile Court Law.

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN  
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

ALVARO A.,

Defendant and Appellant.

B268863

(Los Angeles County  
Super. Ct. No. DK12798)

APPEAL from an order of the Superior Court of Los Angeles  
County. Frank Menetrez, Judge. Affirmed.

Karen B. Stalter, under appointment by the Court of Appeal, for  
Defendant and Appellant.

Mary C. Wickham, County Counsel, R. Keith Davis, Assistant  
County Counsel and David Michael Miller, Deputy County Counsel for  
Plaintiff and Respondent.

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Father Alvaro A. appeals from the dependency court order assuming jurisdiction over his son, D.A., after finding that father had slapped the four-year-old's face with intense force, thereby causing serious physical harm (Welf. & Inst. Code, § 300, subd. (a)) and posed a risk of doing so again (Welf. & Inst. Code, § 300, subd. (b)).<sup>1</sup> We reject father's contention that there was insufficient evidence to support the finding under subdivision (a) that he inflicted serious physical harm and therefore affirm the order.

### **FACTS AND PROCEDURAL HISTORY**

Respondent Los Angeles County Department of Children and Family Services (Department) filed a petition with the juvenile court in August 2015 alleging that one month earlier, father Alvaro A. had slapped the face of his four-year-old son D.A., causing the child to strike his head on a nearby crib. (§ 300, subds. (a), (b).) Father contends there was insufficient evidence to support these allegations based on a one-time slap that did no more than leave a mark on the child's face.

A photo of the injury shows a significant dark bruise that extends along the entire left side of the minor's face from the hairline to the jaw line. A police officer who investigated the incident confirmed that the injury was consistent with an open-handed slap and left marks along the left side of the child's face, including his forehead and left eye.

The incident occurred while the minor was visiting father, who had recently separated from his wife, I.A., who is the child's mother. According to mother, she asked father about the mark on minor's face after father dropped the boy off, but father refused to answer and sped off. When mother texted father about it later, father said he did not know how the injury occurred, speculating that it happened while he and the minor were asleep.

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<sup>1</sup> All further section references are to the Welfare and Institutions Code.

The minor gave generally consistent versions of the incident. In the initial detention report of August 2015, he told a social worker that this was the first time father had ever hit him. Father slapped him “really hard” because he “messed up the Bible.” Father also pushed the child down by his waist and the minor stayed up all night because it hurt. Father is a devout Christian, and the minor told mother that father slapped him after noticing a torn page in his bible. He told virtually the same story to a social worker in September 2015. The minor told the social worker that father pushed him down on the bed and that father hit him five times. While the minor said on a few occasions that father had hit him only once, he also said that father had hit him on one other occasion.

Father told a police detective that the incident occurred while he and the boy were “play fighting” and that he “got angry” and “swat hard” after the boy hit him in the face. In the jurisdictional report of October 2015, a police officer reported that father told him he and the minor had been wrestling, that he was letting the minor try to hit him but was deflecting the swings, and then accidentally hit the boy when the child raised his head.

It is undisputed that the family has no prior history with the Department, and that father has no criminal history. By the time of the jurisdictional hearing, the Department reported that father was cooperative, taking part in required counseling, and had enjoyed positive monitored visits with the minor. However, father still maintained the injury had been an accident. The minor testified that the slap had been a one-time incident. The trial court granted the petition and assumed jurisdiction, finding that the slap had been intentional.

Even though the court assumed jurisdiction of the minor, it did not find clear and convincing evidence of a continued risk to the child. Accordingly,

the court placed him in the custody of both parents, with continued counseling for father. At a May 2016 review hearing, the court terminated its jurisdiction and left the minor in the joint custody of both parents.<sup>2</sup>

## DISCUSSION

The dependency court assumed jurisdiction of the minor under section 300, subdivisions (a) and (b). The former requires proof that the child has suffered, or is at substantial risk of suffering, nonaccidental, serious physical harm. (§ 300, subd. (a).) The latter requires, among others, proof that the child has suffered, or is at risk of suffering, serious physical harm due to the parent's inability to adequately protect or supervise the child. (§ 300, subd. (b).)

Father contends there was insufficient evidence to support the trial court's findings under either subdivision because: (1) the evidence showed the face-slap did not cause serious physical harm; and (2) there was no risk of a reoccurrence because it was a one-time incident, he showed remorse, and fully participated in his court-ordered counseling.

We review the dependency court's jurisdictional findings under the substantial evidence standard, resolving all conflicts and indulging all reasonable inferences in favor of the order. (*In re Mia Z.* (2016) 246 Cal.App.4th 883, 891.) As set forth below, we conclude there was substantial evidence that father inflicted serious physical harm, thereby warranting jurisdiction under section 300, subdivision (a).

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<sup>2</sup> Based on this, respondent has asked us to dismiss the appeal as moot. We decline to do so because the jurisdictional ruling poses a risk of adverse consequences for father in the future. (*In re Daisy H.* (2011) 192 Cal.App.4th 713, 716.) Although we affirm the ruling, it is the opportunity to obtain a reversal to avoid an adverse consequence that defeats the mootness claim.

Father cites several decisions where a minor was clearly the victim of serious physical harm, contending they are far different from the injury he inflicted on the minor. (*In re J.K.* (2009) 174 Cal.App.4th 1426 [father struck child with sufficient force to dislocate her shoulder]; *In re A.E.* (2008) 168 Cal.App.4th 1 [mother struck six-year-old with spatula and other hard objects with sufficient force to leave black and blue bruises]; *In re David H.* (2008) 165 Cal.App.4th 1626, 1628 [mother hit eight-year-old son with an electrical cord and belt 21 times, leaving bruises, red marks, and broken skin]; *In re Mariah T.* (2008) 159 Cal.App.4th 428 [in the context of a three-year-old, serious physical harm resulted when mother struck child with a belt on the stomach and forearms, leaving deep, purple bruises]; *In re Benjamin D.* (1991) 227 Cal.App.3d 1464 [father repeatedly pinched two-year-old son with sufficient force and frequency to leave multiple marks that lasted for several days].)

Father then points to *In re Isabella F.* (2014) 226 Cal.App.4th 128 as analogous support for his contention that he did not cause serious physical harm. In that case, the Court of Appeal reversed a jurisdictional order due to lack of serious physical harm where, while arguing with her 10-year-old daughter, mother hit her face and grabbed her neck, leaving fingernail scratch marks on her face and a fingernail gouge on an earlobe.

We believe the injury father inflicted is far closer to some of the decisions he cites as instances of more serious physical harm than to the scratch marks inflicted in *Isabella F.* With the exception of *In re J.K.*, *supra*, 174 Cal.App.4th 1426, where the minor's shoulder was dislocated, each decision affirmed a jurisdictional finding where the parent applied sufficient force to leave what were described as bruises, black and blue bruises, deep bruises, red marks, or long-lasting pinch marks.

Even the admittedly grainy black and white photo included in the record shows that the minor was left with an extremely dark bruise that spanned nearly the entire left side of his face. The only difference here is that the injury was inflicted by an open hand instead of an inanimate object. We believe that it is the force applied and resulting trauma, not the instrument of force, that determines whether serious physical harm was inflicted. Similar to our decision in *In re Mariah T.*, *supra*, 159 Cal.App.4th at page 438, in the context of a four-year-old child, a slap that leaves such a deep bruise, and which causes a child to fall and strike his head on a crib, is serious physical harm.

Because there was sufficient evidence to support a finding that father inflicted serious physical harm, jurisdiction was proper under section 300, subdivision (a) without a showing that there was a substantial risk of future harm to the minor. (*In re J.K.*, *supra*, 174 Cal.App.4th at p. 1435 [risk of future harm not relevant to finding under subdivision (a) although it is necessary when deciding whether to remove the child from parental custody].) As a result, we need not consider whether jurisdiction was also proper under section 300, subdivision (b). (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

### **DISPOSITION**

The dependency court's jurisdictional order over minor D.A. is affirmed.

RUBIN, ACTING P. J.

WE CONCUR:

FLIER, J.

GRIMES, J.